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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 (SAN JOSE DIVISION)
12

13 SENTIUS INTERNATIONAL, LLC,
14 Plaintiff,
15 v.
16 MICROSOFT CORPORATION,
17 Defendant.

Case No. 5:13-cv-00825 PSG

**DEFENDANT MICROSOFT
CORPORATION'S RESPONSIVE
CLAIM CONSTRUCTION BRIEF ON
"REFERENCE INFORMATION"**

18 AND RELATED COUNTERCLAIMS
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I. INTRODUCTION

As Sentius itself wrote in its claim construction briefing in the *Flyswat*¹ case, the purported invention in the reissue patents-in-suit is “an invention for electronically linking selected components of material displayed on a computer with **external reference information**.” (Docket No. 56-1 at 1).^{2,3} Sentius further explained that this external “reference information” is located using a link, and is retrieved and shown to a user whenever a user clicks on a particular term in the document. (*See Id.* at 2 (“The system disclosed in Claim 8 consists of essentially two parts. First, the claim describes the creation of the linking mechanism between the displayed material (referred to in the Patent as the ‘source material’) and the external **reference information**. Second, Claim 8 explains the operation of the system when a user selects an element of the displayed material and accesses the external **reference information** linked to that element.”); *Id.* at 10 (“Thus, the patent specification describes **reference information** as being available to ‘each word in the electronic text at a word by word level’”); *Id.* at 12 (“Beginning with subparagraph 8.5, the Patent discloses the second functional element of the invention – the operation of the system when a user accesses the source material image to obtain desired **reference information**.”)).

It is not surprising that Sentius previously used the phrase “reference information” in a manner entirely consistent with Microsoft’s proposed construction, which is “the external content that is pointed to by the link in the look-up table.” That is the only possible understanding of this term in light of the relevant intrinsic and extrinsic evidence. Indeed, Sentius cites no support in its opening brief for its own proposed construction. Sentius instead spends most of its briefing attacking Microsoft’s proposed construction as “nonsensical.” Yet if the phrase “reference information” has only one possible construction, the Court must adopt that construction, whether or not it renders the asserted claims indefinite.⁴ The Court cannot rewrite Sentius’ claims, and it

¹ *Sentius Corp. v. Flyswat, Inc.*, Case No. 00-CV-2233-SBA (N.D. Cal. June 22, 2000).

² While the *Flyswat* case dealt with the ’720 patent, the ’633 patent-in-suit (as a reissue of the ’720 patent) shares the same specification.

³ All emphasis is added unless otherwise noted.

⁴ Also, as discussed below, if the Court concludes the disputed claim language supports two or more reasonable interpretations to one skilled in the relevant art, that language is indefinite. *See General Elec. Co. v. Wabash Appliance Corp.*, 304 U.S. 364, 368-69 (1938) (“The inventor must ‘inform the public during the life of the patent of the limits of the monopoly asserted, so that it may

cannot ignore the available intrinsic and extrinsic evidence. It also cannot ignore this dispute and adopt a “plain meaning” construction, as Sentius suggests. For the reasons discussed below, the Court should adopt Microsoft’s proposed construction and define the phrase “reference information” to mean “the external content that is pointed to by the link in the look-up table.”

II. STATEMENT OF FACTS

A. The Asserted Patent

Sentius’ U.S. Patent No. RE43,633 (“the ’633 patent”) is one of two patents reissued⁵ from U.S. Patent 5,822,720 (“the ’720 patent”). (*See* Docket No. 52-4). The ’633 Patent was filed on June 8, 2009 as a continuation of the other asserted reissue patent, U.S. Patent No. RE 40,731 (“the ’731 patent”). (*Id.*). The ’633 patent also claims priority to a patent application filed on February 16, 1994, which was later abandoned. (*Id.*).

The ’633 patent, the ’720 patent, and the ’731 patent all share the same specification. These patents generally describe “building links in a computer environment between particular segments of [the] source material and reference materials related to those segments” and “accessing the reference materials when a segment of source material is selected by a user.” (Docket No. 56-1 at 6). The term “reference information” at issue here appears in asserted claims 70 and 154 of the ’633 patent. (*See* Docket No. 52-4). Those claims recite:

70. The method of claim 62, wherein the link is reference information for retrieving the selected one of the external reference materials.

154. The method of claim 146, wherein the link is reference information for retrieving the selected one of the plurality of external reference materials.

B. The Court’s Claim Construction

During the prior claim construction hearing, the parties disputed the meaning of the “link” limitations in the ’633 patent. The only dispute between Microsoft and Sentius with respect to the term “link” was whether it should be construed as a “pointer to” or a “reference to” external

be known which features may be safely used or manufactured without a license and which may not.”).

1 content. (*See* Docket No. 74-2 at 52:12-19). The Court agreed with Microsoft that the term “link”
 2 should be construed as “a pointer to data or information or the location of data or information that is
 3 external to the source material.” (Docket No. 66).

4 **III. STATEMENT OF LAW**

5 Patent claims “must be read in view of the specification, of which they are a part.”
 6 *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (en banc). As “the person of ordinary
 7 skill in the art is deemed to read the claim term not only in the context of the particular claim in
 8 which the disputed term appears, but in the context of the entire patent, including the specification,”
 9 an analysis of the claim terms that fails to take into account the teachings of the patent specification
 10 is incomplete. *See id.* at 1313; *see also Netword, LLC v. Centraal Corp.*, 242 F.3d 1347, 1352 (Fed.
 11 Cir. 2001) (“The claims are directed to the invention that is described in the specification; they do
 12 not have meaning removed from the context from which they arose”); *Markman v. Westview*
 13 *Instruments, Inc.*, 517 U.S. 370, 389 (1996) (“[A claim] term can be defined only in a way that
 14 comports with the instrument as a whole”). Further, “[l]ike the specification, the prosecution
 15 history [also] provides evidence of how the PTO and the inventor understood the patent,” and is a
 16 part of the intrinsic record. *Phillips*, 415 F.3d at 1317. Finally, while “less significant than the
 17 intrinsic record in determining ‘the legally operative meaning of claim language’ ... extrinsic
 18 evidence can help educate the court regarding the field of the invention and can help the court
 19 determine what a person of ordinary skill in the art would understand claim terms to mean.” *Id.* at
 20 1317-19.

21 While the Federal Circuit has said that claims should be construed to preserve their validity,
 22 “claims can only be construed to preserve their validity where the proposed claim construction is
 23 ‘practicable,’ is based on sound claim construction principles, and does not revise or ignore the
 24 explicit language of the claims.” *See Generation II Orthotics, Inc. v. Medical Tech., Inc.*, 263 F.3d
 25 1356, 1365 (Fed. Cir. 2001); *Elektta Instrument S.A. v. O.U.R. Scientific Int’l, Inc.*, 214 F.3d 1302,
 26 1309 (Fed. Cir. 2000) (“having concluded that the amended claim is susceptible of only one
 27

28 ⁵ Reissue allows a patentee to correct a patent that has been deemed “wholly or partly
 inoperative or invalid, by reason of a defective specification or drawing, or by reason of the

reasonable construction, we cannot construe the claim differently from its plain meaning in order to preserve its validity”); *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1434 (Fed. Cir. 1988) (rejecting argument that limitations should be added to claims to preserve their validity). The Federal Circuit “has repeatedly held that courts may not redraft claims to cure a drafting error made by the patentee, whether to make them operable or to sustain their validity.” *See Lucent Techn., Inc. v. Gateway, Inc.*, 525 F.3d 1200, 1215 (Fed. Cir. 2008) (explaining that “[t]o do so ‘would unduly interfere with the function of claims in putting competitors on notice of the scope of the claimed invention.’”).

IV. ARGUMENT

Claim Term	Sentius’ Construction	Microsoft’s Construction
“Reference Information” (’633 Patent Claims 70 & 154)	The term does not require construction. Alternatively, the term should be afforded its plain and ordinary meaning of information that refers the system [to the at least one of the plurality of external reference materials]	The external content that is pointed to by the link in the look-up table

A. Microsoft’s Proposed Construction is Consistent with the Intrinsic Evidence

The intrinsic evidence uniformly supports Microsoft’s proposed construction, and indeed Sentius does not appear to argue otherwise.

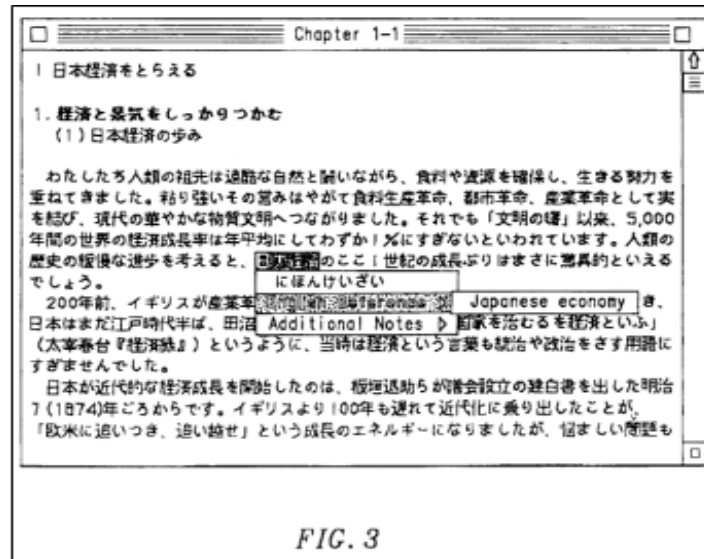
First, the ’633 patent specification describes “reference information” as external content that the claimed system retrieves and displays to the user after the user selects a term in the source material. For example, when referring to Figure 3 (shown below), the ’633 patent uses the phrase “reference information” to describe the English language translation (“Japanese economy”) that is shown to a user when the user clicks on a particular location within the source material. (*See* Docket No. 52-4 at 9:20-22 (“To view the English **reference information** the user selects the English

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patentee claiming more or less than he had a right to claim in the patent.” 35 U.S.C. § 251.

Reference from the pop-up menu and the information appears next to the pop-up menu.”); *see also id.* at 5:4-6 (“The first module is an electronic viewer that gives the user access to **reference information** on each word in the electronic text at a word by word level.”)).



Second, the prosecution history of the original '720 patent similarly uses the phrase “reference information” to refer to the external content that is pointed to by the link in the claimed look-up table. Specifically, during the prosecution of the '720 patent, the examiner rejected various claims based on the Transparent Language program prior art, noting that, “[t]he Transparent Language program includes a window for displaying foreign language stories and includes means to access **reference information** on selected portions thereof **including definitions and context.**” (Ex. A (10/12/95 Office Action) at 4-5). In a later response, Sentius wrote that it was amending its claims to, “clarify that the **source material pieces and reference information are linked** according to the value of the offsets of the starting, or starting and ending, positions of the source material pieces from the beginning location of said integrated source image.” (Ex. B (1/12/96 Office Action Response) at 9). In other words, both the Patent Office and Sentius understood “reference information” to be the external content that is pointed to by the link in the look-up table.⁶

⁶ Notably, Sentius used the phrases “reference information” and “reference materials” interchangeably during prosecution of the reissue patents-in-suit when replacing the phrase “reference information” with the phrase “external reference materials” in several claims of the '731 patent. (See Ex. C (Feb. 24, 2005 Prelim. Amendment) at 41 (claim 10); *see also id.* at 41-42

A. Microsoft’s Proposed Construction is Consistent With the Extrinsic Evidence and With Sentius’ Own Admissions About the Scope of the Claims

The relevant extrinsic evidence, as well as Sentius’ own admissions about the scope of its claims, also supports Microsoft’s proposed construction.

First, as noted above, Sentius itself used the phrase “reference information” in its claim construction briefing in the *Flyswat* litigation to refer to the external content that is pointed to by the link in the look-up table. (See Docket No. 56-1 at 1 (“The ’720 Patent generally discloses an invention for electronically linking selected components of material displayed on a computer with **external reference information**”); *Id.* at 2 (“The system disclosed in Claim 8 consists of essentially two parts. First, the claim describes the creation of the linking mechanism between the displayed material (referred to in the Patent as the ‘source material’) and the external **reference information**. Second, Claim 8 explains the operation of the system when a user selects an element of the displayed material and accesses the external **reference information** linked to that element.”); *Id.* at 10 (“Thus, the patent specification describes **reference information** as being available to ‘each word in the electronic text at a word by word level’”); *Id.* at 12 (“Beginning with subparagraph 8.5, the Patent discloses the second functional element of the invention – the operation of the system when a user accesses the source material image to obtain desired **reference information**.”)).

Second, during the parties’ e-mail exchange regarding these newly-asserted claims, Sentius stated, “[w]e agree that the portions of the specification that you cite to arguably use the term ‘reference information’ synonymously with the external materials.” (See Docket No. 70-4).

Third, named inventor Marc Bookman previously testified that “cutting” meant “the process of dividing this source image into individual components **that will be linked with the external reference information**.” (Ex. D (Jun. 28, 2001 Bookman Depo.) at 190:8-11).

(claims 11-13)). The only purported reason for this amendment, according to Sentius, was to “ensure proper antecedent basis, remove redundant terms, and provide improved clarity.” (See *id.* at 9). Sentius said that “[n]o new matter [was] added” as a part of these amendments. (*Id.* at 3). Sentius never told the Patent Office that its replacement of the phrase “reference information” with the phrase “external reference material” materially changed the scope of its claims, and indeed it could not have done so given the requirements of 35 U.S.C. § 251, which strictly limits the types of changes that can be made through a reissue proceeding.

Once again, all of this evidence suggests that the phrase “reference information” means “the external content that is pointed to by the link in the look-up table.”

B. Sentius Provides No Support for its Proposed Construction, Which Means the Court Must Reject It

Sentius’ cites no intrinsic or extrinsic evidence to support its own proposed construction. (See Docket No. 93 at 7-9). The only thing that Sentius cites is the language of the asserted claims themselves. (*Id.*). Sentius ignores that the language of these claims was first added to the ’633 patent during the reissue prosecution, more than *seventeen years* after the original specification was filed in February of 1994. (See Ex. E (June 22, 2011 Amendment) at 17 & 35 (adding claims 70 and 154)).⁷ These new claims are thus not a part of the specification for purposes of 35 U.S.C. § 112. See *Purdue Pharma L.P. v. Faulding Inc.*, 230 F.3d 1320, 1329 (Fed. Cir. 2000) (“the support for the invention must be found in the specification as filed, and ... the amended claims could not be used to provide that support”). Also, “no new matter [can] be introduced into [an] application for reissue.” See 35 U.S.C. § 251(a). In other words, these new claims must be supported by *something* in the original specification; if not, they are invalid under either 35 U.S.C. § 112 for lacking written description, or under 35 U.S.C. § 251 for impermissibly adding new matter and/or broadening the claims during reissue proceedings, or possibly both. Sentius does not point to anything in the specification that supports these claims, and based on this complete lack of any intrinsic or extrinsic evidence, the Court must reject Sentius’ proposed construction out of hand.

C. The Court May Not Redraft Sentius’ Claims to Preserve Their Validity

Since Sentius cannot show that its proposed construction has any support in the specification or the file history of the ’633 patent, its briefing instead focuses on attempting to undermine Microsoft’s proposed construction, arguing that it would result in “nonsensical claims.” (See

⁷ Similar claims were added to the ’731 patent in 2005, eleven years after the original application was filed. (See Ex. C (2/24/2005 Prelim. Amendment) at 48 (claim 24), 54 (claim 63)). While the ’720 patent includes the words “reference information” (in a manner consistent with Microsoft’s proposed construction), none of its claims recite that a “link is reference information.” (See Docket No. 56-15 (’720 patent)). Also, while Sentius cited the ’720 patent specification at 6:41-7:46 as support for these new claims during prosecution, the cited paragraphs do not use the phrase “reference information.” (See Ex. E (June 22, 2011 Amendment) at 51 & 61; Docket No. 56-15 (’720 patent) at 6:41-7:46).

Docket No. 93 at 9). While claims should generally be read to preserve their validity, the Court must still apply “sound claim construction principles” in order to interpret those claims. *See Elekta*, 214 F.3d at 1309. Specifically, the claims must be construed in light of the available intrinsic and extrinsic evidence, and where the meaning of a claim term is clear “after reviewing all the intrinsic evidence,” the claims must be construed without regard to validity. *See Lucent Techs.*, 525 F.3d at 1215 (noting that “[t]his court has repeatedly held that courts may not redraft claims to cure a drafting error made by the patentee, whether to make them operable or to sustain their validity.”). Since the phrase “reference information” has a clear meaning, the Court must adopt that meaning, regardless of whether it results in invalid or nonsensical claims. *See Chef Am., Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1374 (Fed. Cir. 2004) (“where as here, claims are susceptible to only one reasonable interpretation and that interpretation results in a nonsensical construction of the claim as a whole, the claim must be invalidated”).⁸

Sentius cites *Praxair, Inc. v. ATMI, Inc.* 543 F.3d 1306, 1319 (Fed. Cir. 2008), for the proposition that, “[a] claim will be found indefinite only if it ‘is insolubly ambiguous,’ and no narrowing construction can be properly adopted.” Whether or not the two asserted claims at issue here are indefinite is a separate question from the proper construction for the phrase “reference information.” Microsoft agrees with Sentius that these claims are impossible to understand. They are either not infringed because no accused products (and quite possibly no real-world systems) function in the manner recited, or they are invalid under 35 U.S.C. §§ 101 and/or 112 for claiming non-functional and nonsensical systems. As noted above, however, that does not mean that the Court can simply ignore the language that Sentius chose for these claims, nor can the Court redraft the claims to save their validity.

D. “Reference Information” Requires Construction

Sentius further errs when it argues that because “reference” and “information” have a “well-known” meaning that “is not seriously in dispute” the claim term “reference information” needs no

⁸ If, on the other hand, the Court concludes the claim language supports two or more reasonable interpretations to one skilled in the relevant art, then the claims are indefinite. *See General Electric*, 304 U.S. at 368-69 (“The inventor must ‘inform the public during the life of the

1 construction. (*See* Docket No. 93 at 9). Sentius provides no support for its argument that
 2 “grammatically and in the context of the claim,” “reference information” means “information used
 3 to refer to something.” (*Id.*). The term “reference information” in the context of the claimed
 4 invention plainly refers instead to information that is referenced, such as dictionaries or
 5 encyclopedias in a library (i.e., the “reference section,” which contains “reference materials” with
 6 “reference information”). Consistent with this plain meaning, the ’633 patent describes “reference
 7 materials, such as electronic encyclopedias, and dictionaries.” (*See* Docket No. 52-4 at 6:29-30, 43-
 8 44; *see also id.* at 5:4-5 (“an electronic viewer that gives the user access to **reference information**
 9 on each word”)). That is the “plain meaning” of this phrase in light of the intrinsic and extrinsic
 10 evidence. To the extent Sentius argues otherwise (without any support), that only demonstrates that
 11 the “plain and ordinary meaning” of the phrase “reference material” is in dispute, which means the
 12 Court must resolve that dispute. *See O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d
 13 1351, 1361 (Fed. Cir. 2008).⁹

14 **E. Sentius Cannot Circumvent the Court’s Construction of “Link”**

15 Just as Microsoft predicted when Sentius sought leave to assert these additional claims,
 16 Sentius appears to be seeking a construction that circumvents the Court’s construction of the term
 17 “link.” As the Court will recall, the only dispute between Microsoft and Sentius at the claim
 18 construction hearing with respect to the term “link” was whether the Court should construe the term
 19 as a “pointer to data or information” or a “reference to data or information.” (*See* Docket No. 74-2
 20 at 52:12-19). Microsoft argued that the word “reference” was too vague, and that the more precise
 21 term “pointer” was necessary to accurately capture the concepts described and claimed in the
 22 reissue patents-in-suit. (*See Id.* at 60:5-20, 62:25-63:9). Indeed, Microsoft argued that the way
 23 Sentius was applying the term “reference” rendered it invalid as indefinite. (*Id.* at 68:7-16). The
 24 Court ultimately agreed with Microsoft’s proposed construction for the term “link,” rejected
 25

26 patent of the limits of the monopoly asserted, so that it may be known which features may be safely
 27 used or manufactured without a license and which may not.”).

28 ⁹ And once again, to the extent that the Court disagrees with Microsoft and finds that the
 phrase has multiple potential meanings to one of ordinary skill (i.e., information referenced from
 and information referenced to), that means the limitation is indefinite. *See General Electric*, 304
 U.S. at 368-69.

1 Sentius' proposal of "reference," and adopted as its construction "a **pointer** to data or information
2 or the location of data or information that is external to the source material." (Docket No. 66).

3 Because Microsoft does not infringe under the Court's construction for the term "link,"
4 Sentius now attempts to sidestep that construction. Specifically, instead of establishing that the
5 accused products include a "pointer" in a "look-up table" (which they do not), Sentius wants to
6 argue that these claims only require "information" in the claimed table, and not a "pointer." This
7 argument is logically and legally flawed. Under 35 U.S.C. § 112, a dependent claim must
8 "incorporate by reference all the limitations of the claim to which it refers," and it must "specify a
9 further limitation of the subject matter claimed." In other words, these newly-asserted dependent
10 claims must incorporate the concept of a "pointer," and whatever "reference information" means, it
11 must be something narrower than a pointer. *See Phillips*, 415 F.3d at 1315. Sentius' proposed
12 construction, which suggests that the term "reference information" is merely "information" and not
13 a "pointer," thus violates 35 U.S.C. § 112 and the Court's prior claim construction for the term
14 "link."

15 Sentius never sought reconsideration of this Court's claim construction, and it does not do so
16 now. Since Sentius' proposed construction is inconsistent with both the plain meaning of the phrase
17 "reference information" in light of all the relevant evidence, as well as with the Court's claim
18 construction for the "link" limitation, the Court must reject Sentius' proposal.

19 **V. CONCLUSION**

20 For the reasons discussed above, Microsoft respectfully requests that the Court construe the
21 term "reference information" to mean "the external content that is pointed to by the link in the look-
22 up table."

23 Dated: May 13, 2014

Respectfully Submitted,

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